

AMENDED IN ASSEMBLY APRIL 11, 2012

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2635

Introduced by Assembly Member Roger Hernández

February 24, 2012

An act to amend Sections 20919 and 20919.3 of, and to repeal Sections 20919.12, 20919.14, and 20919.15 of, the Public Contract Code, relating to public contracts, and making an appropriation therefor. An act to add Section 6103 to the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2635, as amended, Roger Hernández. Public contracts: ~~job order contracting.~~ *construction services: prevailing wage.*

Existing law allows public entities to enter into contracts for work including, but not limited to, repair, remodeling, and other repetitive work to be done according to unit prices.

This bill would require any public entity that contracts for construction services using a unit price contract or annual contract, as defined, to only accept bids that contain unit prices developed using the general prevailing rate, as provided.

~~Existing law authorizes job order contracting, as provided, by the Los Angeles Unified School District, until December 1, 2012. Existing law requires that the unified school district create a report of any job order contract procured, and the work under each contract completed on or before November 1, 2011, and an interim report on all job order contracts completed by December 31, 2004. Existing law required the~~

~~submission of these reports to certain committees in the Legislature and the Office of Public School Construction, as specified, by November 30, 2011, and June 30, 2005, respectively. Existing law requires for contracts awarded pursuant to these provisions that the Los Angeles Unified School District pay a fee into the State Public Works Enforcement Fund, which funds are continuously appropriated for the Department of Industrial Relations' enforcement of prevailing wage requirements on public works projects.~~

~~This bill would delete the date existing law is schedule to be repealed, making the above provisions operative indefinitely. This bill would also remove the obsolete reporting requirements. Because additionally authorized projects would require payment of fees into the State Public Works Enforcement Fund, this bill would make an appropriation.~~

Vote: majority. Appropriation: ~~yes~~-no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 6103 is added to the Public Contract~~
2 ~~Code, to read:~~

3 ~~6103. (a) For the purposes of this section, the following~~
4 ~~definitions apply:~~

5 ~~(1) "Construction services" shall include, but is not limited to,~~
6 ~~minor construction, renovation, alteration, and repair of existing~~
7 ~~facilities.~~

8 ~~(2) "Unit price contract or annual contract" means a~~
9 ~~competitively bid, firm fixed price, indefinite quantity contract for~~
10 ~~the performance of construction services during an agreed upon~~
11 ~~time period, typically for one year with options to extend the~~
12 ~~contract for multiple years.~~

13 ~~(3) "Unit price" means the amount paid for a single unit of an~~
14 ~~item of work.~~

15 ~~(b) A public entity that contracts for construction services using~~
16 ~~a unit price contract or annual contract shall only accept bids~~
17 ~~containing unit prices developed using the general prevailing rate~~
18 ~~as provided in Section 1771 of the Labor Code.~~

19 ~~SECTION 1. Section 20919 of the Public Contract Code is~~
20 ~~amended to read:~~

21 ~~20919. The Legislature finds and declares all of the following:~~

1 (a) ~~It is the intent of the Legislature, in enacting this article, to~~
2 ~~demonstrate an alternative and optional procedure for bidding of~~
3 ~~public works projects that is applicable only to the Los Angeles~~
4 ~~Unified School District.~~

5 (b) ~~The Los Angeles Unified School District should be able to~~
6 ~~utilize cost-effective options for the delivery of public works~~
7 ~~projects, in accordance with the national trend, which include~~
8 ~~authorizations in California, to allow public entities to utilize job~~
9 ~~order contracts as a project delivery method.~~

10 (c) ~~The benefits of a job order contract project delivery system~~
11 ~~include accelerated completion of the projects, cost savings, and~~
12 ~~reduction of construction contracting complexity for the unified~~
13 ~~school district.~~

14 (d) ~~The job order contracting approach should be used for the~~
15 ~~purposes of reducing project cost and expediting project~~
16 ~~completion.~~

17 (e) ~~The availability of job order contracting as a project delivery~~
18 ~~method will not preclude the use of traditional methods of project~~
19 ~~delivery if a traditional method results in higher cost savings.~~

20 (f) ~~It is the intent of the Legislature that job order contracts be~~
21 ~~competitively bid and awarded to the responsible qualified bidder~~
22 ~~providing the lowest responsive bid. It is further the intent of the~~
23 ~~Legislature that nothing in the job order contract process or its~~
24 ~~implementation be used to disenfranchise any bidder or class of~~
25 ~~bidders that otherwise would meet the requirements of this article.~~

26 ~~SEC. 2.—Section 20919.3 of the Public Contract Code is~~
27 ~~amended to read:~~

28 ~~20919.3.—(a) (1) For contracts for public works projects~~
29 ~~awarded prior to the effective date of the regulations adopted by~~
30 ~~the Department of Industrial Relations pursuant to subdivision (g)~~
31 ~~of Section 1771.5 of the Labor Code, the unified school district~~
32 ~~shall establish and enforce for job order contracts a labor~~
33 ~~compliance program containing the requirements outlined in~~
34 ~~Section 1771.5 of the Labor Code, or it shall contract with a third~~
35 ~~party to operate a labor compliance program containing the~~
36 ~~requirements outlined in that provision. This requirement does not~~
37 ~~apply to any project where the unified school district or the job~~
38 ~~order contractor has entered into a collective bargaining agreement~~
39 ~~or agreements that bind all of the contractors performing work on~~
40 ~~the projects.~~

~~(2) For contracts for public works projects awarded on or after the effective date of the regulations adopted by the Department of Industrial Relations pursuant to subdivision (g) of Section 1771.5 of the Labor Code, the unified school district shall reimburse the department for its reasonable and directly related costs of performing prevailing wage monitoring and enforcement on public works projects pursuant to rates established by the department as set forth in subdivision (h) of Section 1771.5 of the Labor Code. All moneys collected pursuant to this subdivision shall be deposited in the State Public Works Enforcement Fund created by Section 1771.3 of the Labor Code, and shall be used only for enforcement of prevailing wage requirements on those projects.~~

~~(3) In lieu of reimbursing the Department of Industrial Relations for its reasonable and directly related costs of performing monitoring and enforcement on public works projects, the unified school district may elect to continue operating an existing previously approved labor compliance program to monitor and enforce prevailing wage requirements on the project if it has either not contracted with a third party to conduct its labor compliance program and requests and receives approval from the department to continue its existing program or it enters into a collective bargaining agreement that binds all of the contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.~~

~~(b) The unified school district shall prepare an execution plan for all modernization projects that may be eligible for job order contracting pursuant to this article. The unified school district shall select from that plan a sufficient number of projects to be initiated as job order contracts during each calendar year and shall determine for each selected project that job order contracting will reduce the total cost of that project. Job order contracting shall not be used if the unified school district finds that it will increase the total cost of the project.~~

~~SEC. 3. Section 20919.12 of the Public Contract Code is repealed.~~

~~SEC. 4. Section 20919.14 of the Public Contract Code is repealed.~~

1 ~~SEC. 5. Section 20919.15 of the Public Contract Code is~~
2 ~~repealed.~~

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